UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ERVIN B. ROGERS,

                          Plaintiff,

                                             ORDER

           - against -

                                             CV 2012-3042 (CBA)(MDG)

POLICE OFFICER JOSE VILLAFANE,

                          Defendant.

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    Defendant moves to dismiss the complaint for failure to
prosecute pursuant to Rule 41(b) of the Federal Rules of Civil
Procedure.[1] On December 24, 2012, defendant moved to compel
plaintiff to execute and return releases for plaintiff's arrest
record and medical records so that defendant could obtain
information necessary to respond to plaintiff's complaint. See
ct. doc. 10. On December 26, 2012, this Court granted
defendant's request and directed plaintiff to execute and
promptly return to counsel for defendant by January 14, 2013 the
authorizations for release of sealed arrest and criminal
prosecution records and medical records which counsel for the
defendant had sent. See electronic order dated 12/26/12.
However, there is no indication on the docket sheet that the
Court mailed plaintiff a copy of the December 26, 2012 order.

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    [1] Since defendant moves to dismiss as a sanction for failure
to comply with my order concerning pretrial discovery, I will
address it in the first instance. However, were dismissal an
appropriate sanction, I would address the motion as a report and
recommendation. See Thomas E. Hoar, Inc. v. Sara Lee Corp., 900
F.2d 522, 525 (2d Cir. 1990).

Since plaintiff may not have received a copy of the order, it is premature to entertain a motion to dismiss.

Accordingly, plaintiff must execute and return to counsel for defendant by February 14, 2013 the authorizations for release of sealed arrest and criminal prosecution records and medical records previously sent to plaintiff. Failure to comply with this order may result in sanctions being imposed against plaintiff, including dismissal of this action.

SO ORDERED.

Dated: Brooklyn, New York
           February 1, 2013

                                    _/s/_____
                                    MARILYN D. GO
                                    UNITED STATES MAGISTRATE JUDGE